IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-93

THE AMERICAN OIL COMPANY, ET AL., *Petitioners*

v.

CITY OF PHILADELPHIA, ET AL.

REPLY BRIEF OF PETITIONERS

In their briefs in opposition,[1] the respondents raise one point not already dealt with in the petition for the writ of certiorari. That point concerns the appealability of the district court's order directing disclosure of grand-jury testimony to the private plaintiffs. The private plaintiffs now insist that that order was interlocutory, and that the court of appeals could rightly have declined to consider the petitioners' appeal on that ground.

As the private plaintiffs concede, the court of appeals did not pass on the appealability question (Pet. 2a). There can be no dispute, however, that the district

[1] The petitioners have been served with two briefs in opposition—one on behalf of the Yellow Cab Companies of Philadelphia and Camden, and Yellow Limousine Service, Inc.; and another on behalf of the City of Philadelphia, the State of New Jersey, McCloskey & Co., and others.

court's order was directly appealable to the court below. Unlike most disclosure orders, the order at issue was entered after final judgment; it cannot be deemed interlocutory because there was no future event that it might abide. Surely, if the order had been embodied as part of one over-all decree ending the government's case, there could be no question of its appealability to the court of appeals. The outcome should not differ simply because the order was contained in a separately captioned document.[2]

Other points raised by the respondents merit only passing refutation. Throughout the briefs in opposition, the respondents urge that the grand-jury witnesses have already conceded their lack of memory, and point to the affidavits filed by those witnesses in connection with the petitioners' successful efforts to obtain the grand-jury testimony before the New Jersey district court. The fact is that those witnesses conceded no such lack of memory. What they said (as appears in the affidavits reprinted in the appendix submitted by certain of the respondents) is that they had no specific recollection of their testimony *before the grand jury*. The record does not reveal whether they presently recollect

[2] Authority for the appealability of the district court order here under consideration is found in *United States* v. *United Fruit Co.*, 410 F.2d 553 (5th Cir.), *cert. denied sub nom. Standard Fruit & S.S. Co.* v. *United Fruit Co.*, 396 U.S. 820 (1969). There the district court approved an antitrust consent decree requiring the defendant to create a new company from its own assets. Shortly thereafter, the district court granted the defendant's motion for a protective order to guard against third-party discovery of documents submitted to the Court relating to compliance with the decree. A competitor company moved to obtain discovery, and appealed to the court of appeals from the district court's denial of its motion. The court of appeals held the post-judgment discovery order appealable—even though that order had denied the third-party motion without prejudice to renewal at a later time.

the events that were the subject of the grand-jury inquiry and of the present litigations. That question can be resolved only after the witnesses' depositions commence—by following the procedure utilized in the electrical equipment antitrust cases, discussed throughout the petition for certiorari.

The respondents also contend that this Court lacks jurisdiction to entertain the petition for the writ because the petition is styled *American Oil Co.* v. *City of Philadelphia*—coincidentally the title of one of the private suits now pending in the district court—rather than *American Oil Co.* v. *United States,* the title of this proceeding in the court of appeals. The respondents' contention is frivolous. The petition is captioned, in accordance with proper practice before this Court, to reflect the true parties at interest in the proceeding. R. Stern & E. Gressman, Supreme Court Practice, § 6.29, at 283-84 (4th ed. 1969).

For the reasons previously set forth, the petitioners pray that the Court grant their petition for a writ of certiorari.

Respectfully submitted,

SIMON H. RIFKIND
Attorney for Petitioners,
Office and P.O. Address
345 Park Avenue
New York, N.Y. 10022
212—935-8000

PAUL, WEISS, RIFKIND,
WHARTON & GARRISON
JAY GREENFIELD
LEONARD H. BECKER
Of Counsel

Dated: September 12, 1972